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**Letter dated 18 November 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council**

I write with reference to my letter of 18 July 2003 (S/2003/746).

The Counter-Terrorism Committee has received the attached third report from the Bahamas submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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## Annex

### Letter dated 3 November 2003 from the Permanent Representative of the Bahamas to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to refer to your letter dated 11 July 2003 regarding the supplementary report submitted by the Bahamas pursuant to paragraph 6 of Security Council resolution 1373 (2001) on 4 April 2003.

Please find enclosed the second supplementary report requested by the Counter-Terrorism Committee (see enclosure).

I stand ready to provide any further information as may be required.

(*Signed*) Paulette A. **Bethel**
Permanent Representative

## Enclosure

**COMMONWEALTH OF THE BAHAMAS**
**SECOND SUPPLEMENTAL REPORT SUBMITTED TO THE**
**COUNTER-TERRORISM COMMITTEE**

**Pursuant to paragraph (6) of Security Council resolution 1373 (2001)**

1.2 ***The CTC would be grateful to be provided with a progress report on the ratification of the Convention for the Suppression of the Financing of Terrorism by The Bahamas.***

A decision on the ratification of the Convention for the Suppression of the Financing of Terrorism is imminent as the necessary implementing legislation is before Parliament at this time.

1.3 ***The CTC would be pleased to know the current status of the Bill for an Act to implement the United Nations Convention respecting the Suppression of the Financing of Terrorism, the United Nations Security Council Resolution 1373 on Terrorism and generally to make provision for the preventing and Combating of Terrorism.***

The Anti-Terrorism Bill is presently before the House of Assembly. Debate on the Bill commenced on 24 September 2003. The Bill is now in Committee stage. After the Bill is passed by the House of Assembly it would be forwarded to the Senate for further debate after which it would be assented to by the Governor General and become Law. It is anticipated that this process will be completed before the end of the year.

***1.4 The effective implementation of sub-paragraph 1(d) requires States to ensue, that funds and other resources collected by charities, cultural and other religious organizations, are not diverted from their stated purpose, in particular to terrorist use. Could The Bahamas please inform the CTC of the legal and administrative measures which they have in place to register, audit and monitor the collection and the use of funds and other resources by the aforementioned organizations.***

Charities, cultural and other religious organizations are licensed by the Minister responsible for Companies pursuant to section 14 of the Companies Act which provides

*"14. (1) Where the Minister is satisfied that an association is about to be incorporated as a limited liability company for the purpose of promoting objects that are religious, charitable, educational, scientific, historical, fraternal, literary, sporting, artistic or athletic, and that the profits (if any) and other income are to be applied to the promotion of those objects, or that there is a prohibition of any dividend or refund of contribution to its members, the Minister may by licence authorize that the association be incorporated without the word "Limited" in its name.*

*(2) Where it is proved to the satisfaction of the Minister-*

*(a) that the objects of a company incorporated as a limited liability company are restricted to those specified in subsection (1) and to objects incidental or conducive thereto; and*

*(b) that, by its constitution, the company is required to apply its profits, if any, or other income in promoting its objects, and is prohibited from paying and dividend to its members,*

*the Minister may by licence authorize the company to make, by resolution, a change in its name, including or omitting the word "limited" and subsection (3) shall apply to a change of name under this subsection.*

*(3) Where a company changes its name under subsection (2) the company shall notify the Registrar of such change and the Registrar shall enter the new name in the register of companies in place of the former name, and shall issue a new certificate of incorporation indicating the change of name.*

*(4) A licence by the Minister under this section may be granted on such conditions and subject to such regulations as the Minister thinks fit, and those conditions and regulations shall be binding on the company, and shall, if the Minister so directs, be inserted in the memorandum and articles or in one of those documents.*

*(5) An association to which a licence is granted, on incorporation, is entitled to enjoy all the privileges of limited companies and be subject to all their obligations, except those of using the "Limited" as any part of its name and of publishing its name and of sending lists of members and directors and other officers to the Registrar.*

*(6) A licence under this section may at any time be revoked by the Minister, and upon revocation the Registrar shall enter the word "Limited" at the end of the name of the company as it appears in the register and the exemptions and privileges granted by this section shall cease to apply to the company, but before a licence is revoked by the Minister, he shall inform the company of his intention and shall afford the company an opportunity of being heard in opposition to the intended revocation.*

*(7) This section applies to a non-profit company as incorporated in accordance with Part VI of this Act."*

At the time of licensing these companies, due diligence is carried out on the proposed directors of the companies and the objects of the companies are scrutinized.

The Financial Transactions Reporting Act and the Financial Transactions Reporting Regulations make provisions for the verification of the identity of all account holders whether they are individuals or companies.

The Financial Transactions Reporting Regulations provides

*"3. (1) Where a financial institution is required to verify the identity of any person, the following information is required-*

*(a) full and correct name of person;*
*(b) permanent address;*
*(c) telephone and fax number (if any);*
*(d) date and place of birth;*
*(e) nationality;*
*(f) occupation and name of employer (if self employed, the nature of the self employment);*
*(g) copy of the relevant pages of passport, driver's licence, voter's card, national identity card or such other identification document bearing a photographic likeness of the person as is reasonably capable of establishing the identity of the person;*
*(h) signature;*
*(i) purpose of the account and the potential account activity;*
*(j) source of funds;*
*(k) written confirmation that all credits to the account are and will be beneficially owned by the facility holder except in circumstances where the account is being operated by an intermediary for the purpose of holding funds in his professional capacity;*
*(l) such documentary or other evidence as is reasonably capable of establishing the identity of that person.*

*(2) Paragraph (1) shall apply to the verification of identity of the beneficial owners of all facilities.*

*4. Where a financial institution is required to verify the identity of any corporate entity whether incorporated in The Bahamas or elsewhere, the following information is required-*

*(a) certified copy of the certificate of incorporation;*
*(b) certified copy of the Memorandum and Articles of Association of the entity;*
*(c) location of the registered office or registered agent of the corporate entity;*
*(d) resolution of the Board of Directors authorising the opening of the account and conferring authority on the person who will operate the account;*
*(e) confirmation that the corporate entity has not been struck off the register or is not in the process of being wound up;*
*(f) names and addresses of all officers and directors of the corporate entity;*
*(g) names and addresses of the beneficial owners of the corporate entity;*
*(h) description and nature of the business including:*

*(i) date of commencement of business.*
*(ii) products or services provided;*
*(iii) location of principal business;*

*(i) purpose of the account and the potential parameters of the account including:-*
*(i) size, in the case of investment and custody accounts;*
*(ii) balance ranges, in the case of deposit accounts;*
*(iii) the expected transaction volume of the account;*

*(j) written confirmation that all credits to the account are and will be beneficially owned by the facility holder except in circumstances where the account is being operated by an intermediary for the purpose of holding funds in his professional capacity;*

*(k) such other official documentary and other information as is reasonably capable of establishing the structural information of the corporate entity."*

Additionally any financial institution doing business with a charitable, cultural or other religious organization has an obligation to report any suspicious transaction to the Financial Intelligence Unit. The Anti-Terrorism Bill once enacted will amend the Financial Intelligence Act to include offences under the Anti-Terrorism Act thereby putting an obligation on financial institutions to make suspicious transaction reports on offences under the Anti-Terrorism Act.

The Financial Intelligence Unit has issued Guidelines for financial institutions. Paragraph 55 of the Guidelines issued to banks and trust companies provides –

*"In the case of accounts/facilities to be opened for clubs, societies and charities, a bank or trust company should satisfy itself as to the legitimate purpose of the organization by, for example, requesting sight of the constitution or certificate of incorporation or memoranda or articles of association. The identity of all signatories to the account should be verified initially and, when signatories change, care should be taken to ensure that the identity of each new signatory has been verified."*

***1.5 In the context of the effective implementation of paragraph 1 of the Resolution, could The Bahamas please inform CTC whether the process of recalling bearer shares and replacing them with registered shares, as reported in the supplementary reports at page 5 has been completed. Could The Bahamas also indicate, what precautions are taken by the relevant authorities to verify bearer shares with a view to ensuring that none of them have been issued to terrorists, to organizations with terrorist links, to organizations notified/proscribed by the UN Security Council, to other international Organizations or to States.***

Section 196(4) of the International Business Companies Act provides that

*"(4) Every company which has issued bearer shares under the repealed Act shall recall such shares within six months from the date of commencement of this Act and the company shall cancel such shares and substitute therefor registered shares issued in accordance with this Act and the regulations made thereunder. Any bearer shares which have not been recalled and cancelled within the said period of six months shall thereafter be null and void and be without effect for all purposes of law."*

If the bearer shares were not substituted before 29 June 2001 they became void. Even though an IBC incorporated in The Bahamas is unable to issue bearer shares it is a fact that bearer shares are still issued in some countries. Financial institutions dealing with bearer shares have an obligation to satisfy themselves that they know the identity of the holder of the shares pursuant to the provisions of the Financial Transactions Reporting Act and the Financial Transactions Reporting Regulations

***1.6 Sub-paragraph 2(a) requires states to suppress the recruitment of members of terrorist groups operating either inside or outside The Bahamas. The CTC notes that section 403 of the Penal Code referred to in the supplementary Report (at page 13) of The Bahamas does not adequately address this issue. Could The Bahamas please inform the CTC the steps it proposes taking in this regard.***

Clause 10 of the draft Terrorism Bill makes it an offence to solicit support or give support to terrorist groups or for terrorists acts. Support includes -

(a) an offer to provide, or the provision of, forged or falsified travel documents to a member of a terrorist group;

(b) an offer to provide, or the provision of a skill or an expertise for the benefit of, at the direction of or in association with a terrorist group;

(c) entering or remaining in any country for the benefit of, or at the direction of or in association with a terrorist group.

Clause 11 makes it an offence to harbour or conceal, or prevent, hinder or interfere with the apprehension of any person knowing, or having reason to believe that such other person has committed or is planning or likely to commit a terrorist act; or is a member of a terrorist group.

Clause 12 further makes it an offence to agree to provide training or instruction or provides training or instruction in the making or use of any explosive or other lethal device; in carrying out any terrorist act or in the practice of military exercises or movement.

As indicated earlier this Bill is now at Committee Stage in the House of Assembly.

***1.7 Effective implementation of subparagraph 2(d) of the Resolution requires a State to make it a criminal offence to use its territory for the purpose of committing a terrorist act against another state or its citizens or for the purposes of financing, planning and facilitating the commission of terrorist act aimed at other states or its citizens, whether or not a related terrorist act has been committed or attempted. Could The Bahamas indicate how Article 14 of the Anti-Terrorism Bill adequately meets all the requirements of this paragraph.***

Clause 15 of the draft Terrorism Bill may not adequately address the requirements of paragraph 2(d) of Resolution 1373. The Attorney General has foreshadowed amendments being made to the Anti-Terrorism Bill that was tabled in Parliament. Any additional amendments would be considered and moved to the Bill presently before the House of Assembly.

***1.8 The CTC would be pleased to know the progress relating to the issuance of machine readable passports, reference to which is made at page 22 of the supplementary report of The Bahamas.***

The Government of The Bahamas is in the process of evaluating the bids received for the acquisition of the necessary hardware and software for the issuance of machine readable passports. It is intended that the system would be in place by mid 2004.

***1.9 The CTC notes that article 7 of The Extradition Act of The Bahamas provides a number of grounds for refusing a request for extradition. Could The Bahamas please indicate, whether, when a request for the extradition of a person has been refused on particular grounds, the laws of The Bahamas provide for the prosecution of that person in The Bahamas***

Section 7 of the Extradition Act provides a number of grounds that the Minister, the court of committal or the Supreme Court on an application for habeas corpus may refuse to extradite a person. Clause 14 of the proposed Anti Terrorism Bill provides that an offence under that Act or an offence under any other Act where the act or omission constituting the offence also constitutes a terrorist act shall for the purposes of extradition be deemed not to be an offence of a political character or an offence connected with a political offence or an offence inspired by political motives.

With the exception of an offence of a political nature the other restrictions in section 7 of the Extradition Act do not enable officials in The Bahamas to prosecute a person in The Bahamas where extradition has been refused.

***1.10 The CTC would appreciate receiving a report concerning the progress recorded by The Bahamas towards becoming a party to the remaining seven international instruments related to the Prevention and Suppression of International Terrorists.***

The remaining seven international instruments related to the prevention and suppression of international terrorism are being reviewed by the Office of the Attorney General. Accession/Ratification of these instruments requires Cabinet approval. Other priorities and resources permitting, The Government of The Bahamas intends to move forward with this process over the next several months. Enactment of anti-terrorism legislation, which is presently before Parliament, would greatly facilitate this process.